

1628. December 2. CUMING against CUMING.

No 32.

FOUND, that an arrestment of farms cannot be of force, being made before the term of Martinmas, if, *meâs tempore*, the lands be comprised, and the compriser infest before the term.

*Kerse, MS. (ARRESTMENT.) fol. 235.*

1629. November 24. LINDSAY against L. LAURISTON.

No 33.

A sum not bearing expressly annualrent, but a certain quantity of victual yearly in place of annualrent, found arrestable.

SEVERAL sums, owing by the Laird of Lauriston to one Fairweather, being arrested by Lindsay, creditor to Fairweather, and Lauriston pursued to make the sum furthcoming, and he *alleging*, That he could not be found debtor therein by the contract produced, which was a tack, set by him to Fairweather, of lands for payment of a yearly duty, which duty the contract bore, ' That the L. Lauriston ' allowed to Fairweather, and that for satisfaction of the annual of 1000 pounds ' owing by him to Fairweather, and that for the space to come, while Candlemas ' after the contract, which Fairweather accepted ;' and before the Candlemas the arrestment was laid on, which contract Lauriston *alleged* could not make him debtor at the time of the arrestment ; for albeit it have might been, that he was debtor the time of the contract, yet it would not follow, that he still continued debtor at the time of the arrestment, and the paying of annual at a term which was not expired, at the time of the arrestment, will not inforce that he remained debtor of the principal sum : therefore he ought to prove that he was debtor otherwise at the arrestment of the sum, seeing he might transact with the party therefor : And further *alleged*, That the sum was not arrestable, being heritable, by the same contract, which appointed annual to be paid therefor. This *allegance* was repelled, for this confession emitted in the contract, subscribed by the parties, was found enough to make him debtor at the time of the contract, which behoved still to burden him, except he would prove it were paid before the arrestment ; and it was found not to be an heritable sum, for the victual allowed to the creditor for his annual to such a time, made not the sum heritable, except it were proven, by the tenor and conception of the bond, that it was heritable.

Act. ———

Alt. Mowat.

*Fol. Dic. v. 1. p. 55. Durie, p. 469.*

1633. March 20. SIMPSON against WHITE.

No 34.

A sum destined to be laid out upon annualrent, after

ANTHONY WHITE being obliged to his son-in-law, Alexander Blair, in the sum of 1000 merks, to be paid the first term after his decease, and to be employed, at the payment, by the said Alexander Blair, upon annualrent. This sum being